

M I L L E R & V A N E A T O N
— P. L. L. C. —

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October 25, 2004

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Notice of Ex Parte*
WC Docket Nos. 04-29, 04-36 and 03-211

Dear Ms. Dortch:

Re: Ex Parte Presentation in *IP Enabled Services*, WC Dkt No. 04-36

Dear Ms. Salas:

Pursuant to 47 C.F.R. § 1.1206, the National League of Cities, National Association of Counties, National Association of Telecommunications Officers and Advisors and the United States Conference of Mayors, through their undersigned counsel, disclose a written *ex parte* presentation in the above-captioned proceeding, a copy of which is attached.

Please contact the undersigned with any questions.

Very truly yours,

Miller & Van Eaton, P.L.L.C.

By


Gerard Lavery Lederer

NATIONAL ASSOCIATION TO TELECOMMUNICATIONS OFFICERS AND
ADVISORS
NATIONAL ASSOCIATION OF COUNTIES
NATIONAL LEAGUE OF CITIES
UNITED STATES CONFERENCE OF MAYORS

October 25, 2004
Hand Deliver

Honorable Michael Powell
Chairman
Honorable Kathleen Abernathy
Honorable Michael Copps
Honorable Kevin Martin
Honorable Jonathan Adelstein
Commissioners
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: Continuing Request that the Commission Refrain from Acting on Voice-over-Internet Protocol ("VoIP") Issues in a Piecemeal Fashion.

Dear Mr. Chairman Powell and Commissioners Abernathy, Copps, Martin and Adelstein:

The National League of Cities ("NLC"), the U.S. Conference of Mayors ("USCM"), the National Association of Counties ("NACo"), the National Association of Telecommunications Officers and Advisors ("NATOA") write to reiterate¹ our request that the Commission refrain from acting on VoIP/IP Enabled Services issues in a piecemeal fashion.

Any action by the Commission on any VoIP issue, let alone an issue as integral as the jurisdictional nature of the service, prejudices the Commission's ability to holistically

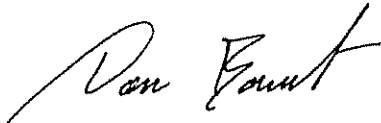
¹ See Written Ex Parte of Nicholas Miller to Honorable Michael Powell filed January 16, 2004 (filed in numerous dockets), a copy of which is attached hereto. Reply Comments of the National Association of Telecommunications Officers and Advisors (NATOA) joined by the National League of Cities (NLC), the National Association of Counties and the Alliance for Community Media in WC Docket No. 03-211 (filed November 24, 2003); Electronic Abeyance filing of the Texas Coalition of Cities for Utility Issues (TCCFUI) available at www.fcc.gov/voip/comments/TexasCoalitionofCitiesforUtilityIssues.txt.

address the innumerable and important issues that have been raised by the Commission in its IP Enabled Services docket.²

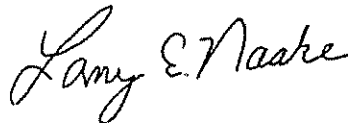
As we stated in both our Comments and Replies Comments in the *IP Enabled Services* docket, local government is enthusiastic about the benefits that VoIP may offer local government and its constituents. We strongly support competition, the rollout of new services, and the economic growth that accompanies new technological developments. But prudent policy development requires careful attention to all of the potential ramifications of such developments and attendant regulatory decisions.

Classifying IP services as purely "inter" or "intra"- state could well prejudice the Commission's ability to preserve and protect CALEA; universal service; E-911; consumer protection; compliance with the Americans with Disabilities Act and those other issues outlined in our previous filings. A piecemeal consideration of VoIP issues will limit the Commission's ability to develop a rational and holistic approach to VoIP.

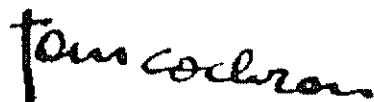
For these reasons, and those previously stated, we urge the Commission to refrain from issuing a jurisdiction classification for VoIP until it is prepared to identify and address the consequences of any such designation.



Don Borut
Executive Director
National League of Cities



Larry Naake
Executive Director
National Association of Counties



J Thomas Cochran
Executive Director
The U.S. Conference of Mayors



Libby Beaty
Executive Director
National Association of
Telecommunications Officers and
Advisors

² *IP Enabled Services*, Notice of Proposed Rulemaking, WC Dkt No. 04-36, FCC 04-28 (rel. March 10, 2004)

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January 16, 2004

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: Request that the Commission Refrain from Acting in Dockets Related to Voice-over-Internet Protocol ("VoIP") Technology until New VoIP Proceeding is Completed

Dear Mr. Chairman:

The Commission now has before it a number of proceedings involving different aspects of VoIP and its potential regulation.¹ In addition, it is anticipated that the Commission will initiate a separate proceeding to address issues related to VoIP generally (the "VoIP

¹ *In re AT&T Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges*, WC Docket No. 02-361 (filed October 18, 2002); *In re Petition for Declaratory Ruling That Pulver.com's Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45 (filed February 5, 2003); *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211 (filed September 22, 2003); *In re BellSouth's Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Such Services to CLEC Voice Customers*, WC Docket No. 03-251 (filed December 9, 2003); *In re Petition of Level 3 for Forbearance from Assessment of Access Charges on Voice-Embedded IP Communications*, WC Docket No. 03-266 (filed December 23, 2003) (collectively, "Pending Proceedings")

- 2 -

Proceeding"). The National League of Cities ("NLC"), the U.S. Conference of Mayors ("USCM"), the International Municipal Lawyers Association ("IMLA"), the National Association of Counties ("NACo"), the National Association of Telecommunications Officers and Advisors ("NATOA") and the Alliance for Community Media ("ACM") (collectively "Local Government") write to request that the Commission refrain from acting in the Pending Proceedings until the Commission has completed its work in the broader VoIP Proceeding. In the alternative, Local Government requests that these matters be consolidated with the VoIP Proceeding. Local Government extends this request to any additional matters involving VoIP that may be opened before the Commission acts in the VoIP Proceeding.

Local Government outlined its rationale for this request in a December 13, 2003, request submitted by the Texas Coalition of Cities for Utility Issues (TCCFUI) and in the November 24 Reply Comments of NATOA, NLC, NACo and the Alliance for Community Media in the Vonage petition (WC Docket No. 03-211) ²

TCCFUI stated:

If the pending VoIP matters are not held in abeyance during the [VoIP] Rulemaking any FCC action taken in those proceedings,[sic] does not have the benefit of a full public discussion and in all likelihood will be taken as precedential as to VoIP matters. As such that FCC action will prejudice those participating in the subsequent Rulemaking process. In fact FCC action on the pending VoIP matters may very well undermine participation in the VoIP Rulemaking if it appears that the policy issues have already been decided, albeit without general public input. That is certainly not the FCC's goal-nor is it TCCFUI's ³

NATOA, NLC, NACo and the Alliance for Community Media addressing the Vonage petition stated:

[I]n its consideration of the VoIP product, the Commission will have to assess this functional equivalent of basic telephone service, with consideration given to the issues pertaining to public safety (911 and E-911), consumer protection and

² See Reply Comments of the National Association of Telecommunications Officers and Advisors (NATOA) joined by the National League of Cities (NLC), the National Association of Counties and the Alliance for Community Media in WC Docket No. 03-211 (filed November 24, 2003) ("NATOA Reply Comments").

³ TCCFUI's comments are available at www.fcc.gov/voip/comments/TexasCoalitionofCitiesforUtilityIssues.txt.

- 3 -

customer service, universal service, number portability, and the myriad of other issues which are now surfacing as a result of wider-spread use of this technology.

. [A]ny action taken by the Commission on this petition would prejudice national policy on an issue for which the Commission has already publicly announced its planned public forum as well as a planned notice of proposed rulemaking. The pending petition must either be held in abeyance or dismissed without prejudice pending the outcome of the Commission's further inquiry.⁴

Local Government is enthusiastic about the benefits that VoIP may offer local government and its constituents. We strongly support competition, the rollout of new services, and the economic growth that accompanies new technological developments. But prudent policy development requires careful attention to all of the potential ramifications of such developments and attendant regulatory decisions. Accordingly, Local Government believes strongly that a full record must be built to address issues that have already been identified with respect to VoIP, such as:

- 1 CALEA;
- 2 Universal service;
- 3 Back-up power and network redundancy;
- 4 E-911; and
- 5 Compliance with the Americans with Disabilities Act (Section 255).

Local Government also believes that a sound regulatory policy for VoIP must address additional issues often overlooked at the federal level. Local governments stand in a unique position with respect to providers and the public, and consequently have several unique interests that the Commission should consider. We believe that a fair and effective policy regarding VoIP must consider the following issues:

Fair Treatment of Consumers -- Local governments are often the regulators of last resort—when the citizenry requires police power protection not asserted by federal or state authorities, local governments must act. The VoIP proceeding must address and preserve local government authority to provide such protections.

Fair Treatment as a Consumer -- Local governments are among the largest consumers of electronic communications, both wired and wireless. Local governments must be

⁴ NATOA Reply Comments at 2

- 4 -

assured fair treatment as customers or consumers of VoIP. Local governments must be guaranteed access to fair services at fair prices

Fair Compensation -- Local governments provide essential resources to the deployment of VoIP. Local governments should receive adequate compensation for the resources they commit to the provision of VoIP. For example, local governments should receive adequate rent for use of public land or other public resources. And VoIP providers should pay a fair share of taxes in a broad-based taxation system.

Fair Treatment as a Provider -- Many local governments offer traditional Title II and Title VI services within their communities. Other local governments have developed significant network capacities on institutional networks or wired infrastructures that could support VoIP services. As the Commission addresses VoIP, it must not take any actions that would limit the ability of local governments to provide such services.

Rights versus Responsibilities of Carriers. The focus of recent FCC proceedings and legislative debates has been on the regulatory burden borne by Title II and Title VI service providers. Just as important, but often ignored, are the numerous rights and entitlements provided to such providers due to their status as Title II or Title VI providers. If Title II and Title VI entities choose to abandon those offerings, or shift their focus toward providing VoIP services, and away from traditional Title II or Title VI services, they will endanger their special status. Local Government believes that the VoIP proceeding should address this issue to consider the full implications of VoIP.

In light of the above concerns, Local Government is concerned that piecemeal consideration of VoIP in separate proceedings will limit the Commission's ability to develop a rational approach to VoIP as a whole. Proceeding with the Pending Proceedings without first developing a framework for the overall treatment of VoIP would be shortsighted and potentially unlawful. It would deprive interested parties of the opportunity to comment meaningfully in the Pending Proceedings when the entire approach to VoIP policy is in flux, and when each of the proceedings could be affected by decisions made in other dockets. Conversely, premature decisions in the Pending Proceedings could have profound precedential effects on the new VoIP Proceeding before that proceeding is even initiated. It is clear even now that VoIP policy is a complex problem, with many interrelated parts. Thus, it would be arbitrary and capricious for the Commission to act without developing an overall, holistic approach to the problems posed by VoIP.

We also believe that part of such a holistic approach to VoIP should include communication to the Congress that the Commission may lack the authority or ability under current law to preserve universal service, to enact consumer safeguards and to address other specific problems that the Commission will identify in the docket. Technological changes have outpaced the regulatory environment established by the Communications Act.

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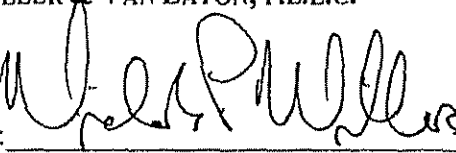
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- 5 -

For these reasons, we urge the Commission to refrain from acting in the Pending Proceedings, and to address the issues raised in those proceedings in conjunction with or after any Commission action in the anticipated VoIP Proceeding. We also urge the Commission to move expeditiously to initiate the VoIP Proceeding.

Respectfully submitted,

MILLER & VAN EATON, P.L.L.C.

By: 

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Matthew C. Ames
Gerard L. Lederer

cc:

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Hon Jonathan S. Adelstein
Hon Michael J. Copps
Hon Kevin J. Martin
Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
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Jeff Carlisle, Senior Deputy Chief, Wireline
Competition Bureau
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Governmental Affairs Bureau
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